

## § 548.400

week in the quarter for which it was computed without regard to the employee's true hourly rate in the particular quarter.

(Sec. 1, 52 Stat. 1060, 1062, as amended, 29 U.S.C. 201, *et seq.*)

[28 FR 11266, Oct. 22, 1963, as amended at 32 FR 3293, Feb. 26, 1967]

### RATES AUTHORIZED ON APPLICATION

#### § 548.400 Procedures.

(a) If an employer wants to use an established basic rate other than one of those authorized under § 548.3, he must obtain specific prior approval from the Administrator. For example, if an employer wishes to compute overtime compensation for piece workers for each workweek in a 4-week period at established basic rates which are the straight-time average hourly earnings for each employee for the immediately preceding 4-week period, he should apply to the Administrator for authorization. The application for approval of such a basic rate should be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. No particular form of application is required but the minimum necessary information outlined in § 548.4 should be included. The application may be made by an employer or a group of employers. If any of the employees covered by the application is represented by a collective bargaining agent, a joint application of the employer and the bargaining agent should be filed. It is not necessary to file separate applications for each employee. One application will cover as many employees as will be paid at the proposed basic rate or rates.

(b) Prior approval of the Administrator is also required if the employer desires to use a basic rate or basic rates which come within the scope of a combination of two or more of the paragraphs in § 548.3 unless the basic rate or rates sought to be adopted meet the requirements of a single paragraph in § 548.3. For instance, an employee may receive free lunches, the cost of which, by agreement or understanding, is not to be included in the rate used to compute overtime compensation.<sup>17</sup> In

<sup>17</sup> See § 548.304.

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addition, the employee may receive an attendance bonus which, by agreement or understanding, is to be excluded from the rate used to compute overtime compensation.<sup>18</sup> Since these exclusions involve two paragraphs of § 548.3, prior approval of the Administrator would be necessary unless the exclusion of the cost of the free lunches together with the attendance bonus do not affect the employee's overtime compensation by more than 50 cents a week on the average, in which case the employer and the employee may treat the situation as one falling within a single paragraph, § 548.3(e).

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5682, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956; 32 FR 3294, Feb. 25, 1967]

#### § 548.401 Agreement or understanding.

If the agreement or understanding establishing the basic rate is in writing, whether incorporated in a collective bargaining agreement or not, a copy of the agreement or understanding should be attached to the application. If it is not in writing, however, the application to the Administrator for approval of a basic rate should contain a written statement describing the substance of the agreement or understanding, including the proposed effective date and term of the agreement or understanding. The term of the agreement or understanding may be of definite duration, or may run indefinitely until modified or changed. If an agreement or understanding is modified, a new application for authorization should be made.<sup>19</sup>

[20 FR 5683, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

#### § 548.402 Applicable overtime provisions.

The application should also contain a description of the terms of employment relating to overtime so that the Administrator can determine how the established basic rate will be used if it is approved. For instance, if the employees are to be paid time and one-

<sup>18</sup> See § 548.305.

<sup>19</sup> See § 548.200 for a further explanation of the requirements as to the agreement or understanding establishing the basic rate.